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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,889	12/30/2003	Jay Z. Muchin	039014-0101	7443
59555 7590 07/09/2008 RATHE PATENT & IP LAW 10611 W. HAWTHORNE FARMS LANE MEQUON, WI 53097				
EXAMINER				
REYNOLDS, STEVEN ALAN				
ART UNIT		PAPER NUMBER		
3728				
MAIL DATE		DELIVERY MODE		
07/09/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/748,889

Applicant(s)

MUCHIN ET AL.

Examiner

Steven Reynolds

Art Unit

3728

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7, 11, 16, 17, 19, 87, 88, 90-100, 105, 108-111, 113, 114, 124-130, 133-173 and 176-178 is/are allowed.
- 6) ☒ Claim(s) 10, 174, 175 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-846)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Continuation of Disposition of Claims: Claims pending in the application are 1-7,10,11,16,17,19,87,88,90-100,105,108-111,113,114,124-130 and 133-178.

DETAILED ACTION

Claim Objections

1. Claims 159, 160, 172 and 175 are objected to because of the following informalities:

In claim 159, line 2, "a second capture" should be "a second aperture".

In claim 172, line 9, "wherein **the** at least one transparent portion" should be "wherein at least one transparent portion".

In claim 175, line 8, "the packaging,," should be "the packaging,".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 fails to further limit claim 1 and renders the claim indefinite. Examiner suggests cancelling claim 10.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 174 and 175 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dalton (US 6,238,818). Dalton discloses a battery bundle (package is used in a flashlight); a first battery having an outer surface with a first graphic; a second battery having an outer surface with a second graphic distinct from the first graphic; and a packaging (4) binding the first battery and the second battery, wherein the circumferential sides of each battery are exposed through the packaging (exposed through aperture 70 in cavity 62) to facilitate rotation of the first battery and the second battery by rotating the circumferential sides, respectively, while within the packaging.

Dalton discloses the claimed invention except for the first graphic being distinct from the second graphic and the first and second battery having a distinct outer surface texture. It is well known and would have been obvious to use different brands of batteries together in the cartridge if that is all the consumer has to use in combination. Therefore, the graphics on the different brands of batteries will be distinct from each other and inherently have graphics in two different locations.

Regarding the graphics and the subjects of the graphics (i.e. portions of a series or theme, word or phrase), they are printed matter that are absent of any new and unobvious functional relationship with respect to the substrate (battery). Accordingly, such printed matter has no patentable weight. See *in re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004).

Allowable Subject Matter

6. Claims 1-7, 11, 16, 17, 19, 87, 88, 90-100, 105, 108-111, 113, 114, 124-130, 133-173 and 176-178 are allowed.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Reynolds whose telephone number is (571)272-9959. The examiner can normally be reached on Monday-Friday 9:30am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mickey Yu/
Supervisory Patent Examiner, Art
Unit 3728

/S. R./
Examiner, Art Unit 3728